

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kate Brattin	Team: Team # 1	CCRB Case #: 200802719	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 02/19/2008 4:20 PM	Location of Incident: 21st Street and 38th Avenue	Precinct: 114	18 Mo. SOL 8/19/2009	EO SOL 8/19/2009	
Date/Time CV Reported Fri, 02/22/2008 5:51 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Fri, 02/22/2008 5:51 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Edward Spagnuolo	07191	905553	NARCBQN
2. DT3 Michael Cervini	02426	913928	NARCBQN
3. DT3 Bryan Zuccaro	02449	931484	NARCBQN

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Robert Cincotta	21824	933694	NARCBQN

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Edward Spagnuolo	Abuse: Detective Edward Spagnuolo stopped § 87(2)(b) § 87(2)(b).	
B.DT3 Michael Cervini	Discourtesy: Detective Michael Cervini acted rudely toward § 87(2)(b).	
C.DT3 Edward Spagnuolo	Force: Detective Edward Spagnuolo used a chokehold against § 87(2)(b).	
D.DT3 Michael Cervini	Force: Detective Michael Cervini used physical force against § 87(2)(b).	
E.DT3 Bryan Zuccaro	Force: Detective Bryan Zuccaro used physical force against § 87(2)(b).	
F.DT3 Edward Spagnuolo	Force: Detective Edward Spagnuolo used physical force against § 87(2)(b).	
G.DT3 Edward Spagnuolo	Force: Detective Edward Spagnuolo struck § 87(2)(b) with a radio.	
H.DT3 Michael Cervini	Discourtesy: Detective Michael Cervini spoke obscenely and/or rudely to § 87(2)(b).	

Synopsis

§ 87(2)(b) a resident of § 87(2)(b), made the following complaint in person at the Civilian Complaint Review Board on February 22, 2008 (Encl. 2A-C). § 87(2)(b) alleged that on February 19, 2008, he was stopped by three plainclothes officers, identified by the investigation as Detective Edward Spagnuolo, Detective Michael Cervini, and Detective Bryan Zuccaro of Queens Narcotics [Allegation A]. § 87(2)(b) alleged that after obtaining his identification card, Detective Cervini threw it into the street and ordered § 87(2)(b) to pick it up [Allegation B]. § 87(2)(b) claimed that as he bent to do so, Detective Spagnuolo placed him in a chokehold [Allegation C], that all three officers punched and kicked him multiple times [Allegations D, E and F], and that Detective Spagnuolo struck him with a police radio [Allegation G]. § 87(2)(b) alleged that as officers were beating him, Detective Cervini said, "Don't fuck with the police" [Allegation H].

Because of the nature of the allegations, § 87(2)(b)'s case was not eligible for the CCRB's mediation program. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Summary of Complaint

§ 87(2)(b) was interviewed at the CCRB on February 22, 2008 (Encl. 4A-G). At the time of his interview, § 87(2)(b) a § 87(2)(b)-old black male with brown eyes and black hair who was 5'11" tall and weighed 190 pounds, § 87(2)(b). He also provided a telephone statement on February 26, 2008 (Encl. 6A), in which he answered follow-up questions. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

On February 19, 2008, § 87(2)(b) went to the library on 21st Street in Long Island City in Queens to use a computer. Some time between 3:00 PM and 5:00 PM, § 87(2)(b) left the library and began to walk home to his residence, which was located nearby in the NYCHA Queensbridge Houses. He was wearing an olive-colored fatigue jacket, blue jeans, black sneaker-boots, and a Yankees cap worn forward. As he exited the library alone, it was still light outside. Several mechanical and auto repair businesses in the area were open, but § 87(2)(b) did not see anyone he knew. He turned right on 21st Street and then prepared to cross 38th Avenue, toward a Shell gas station located on the far side of the street. As he stood on the sidewalk on the corner of 21st Street and 38th Avenue, he saw three white male police officers in an unmarked black SUV, who pulled up along the curb in front of him. § 87(2)(b) knew them to be narcotics officers because he had been approached by one of them, identified by the investigation as Detective Cervini, in the past near his house. The SUV did not park, but stopped in the street.

The driver, described by § 87(2)(b) as a clean-shaven husky white male, 5'8" tall, in his mid-40s, dressed in a black skullcap and a black military-style flight jacket, and identified by the investigation as Detective Spagnuolo, spoke cordially to § 87(2)(b) from the car, asking how he was doing. The other officers, identified as Detective Cervini and Detective Zuccaro, immediately exited the SUV, but did not ask him any questions. § 87(2)(b) described Detective Cervini as a clean shaven white male with a pale complexion, blue eyes and crew-cut reddish hair who was 5'9" tall with a slim build, in his mid-30s, wearing light blue jeans, a gray hooded sweatshirt and a black flight jacket. § 87(2)(b) described Detective Zuccaro as a clean shaven white male with a pointy nose, 5'8" tall, stocky, in his mid-30s, wearing a bulletproof vest under a sweater and a Red Sox cap.

At this point, Detective Spagnuolo also got out of the car and asked § 87(2)(b) for his identification, which § 87(2)(b) presented. Detective Spagnuolo handed it to Detective Cervini, and asked § 87(2)(b) where he lived. § 87(2)(b) told the officers, "At the address on the identification." At this point he was in the street with Detective Cervini standing to his left. All three officers told § 87(2)(b) that he had a bad attitude. § 87(2)(b) asked them why he was being singled out. One of the officers, whose identity § 87(2)(b) could not remember, said, "We'll ask the questions." Detective Spagnuolo said that he could get § 87(2)(b) on a traffic violation. § 87(2)(b) said that he was not disrupting traffic in any way. Detective Cervini then threw his ID into the street, toward the curb closer to the library. Detective Cervini said, "You go get your own ID." § 87(2)(b) who was standing on the sidewalk, bent to pick it up, presenting his back to Detective Spagnuolo as he did so.

§ 87(2)(b) felt someone place him in what he described as a chokehold. He later became aware that this was Detective Spagnuolo, who had placed his arm against § 87(2)(b)'s throat from behind and who dragged § 87(2)(b) onto the sidewalk on the side of 38th Avenue closer to the library, across the street from the gas station. Detective Spagnuolo continued to hold him by the neck. It was difficult for § 87(2)(b) to see this officer, but he could see Detective Cervini and Detective Zuccaro. § 87(2)(b) stated that while Detective Spagnuolo had him in a chokehold, he could breathe only "sparingly." He was in the chokehold for a short period of time, for perhaps five seconds, and was punched during this period of time by the other two officers. He was able to speak a little; he screamed out when officers hit him in the face. Detective Cervini was the first officer to strike him.

§ 87(2)(b) was brought to the ground on the sidewalk in a sitting position with his back to the officers' vehicle. Detective Zuccaro was standing over § 87(2)(b) holding him down by his coat with one hand while striking him with his other fist. § 87(2)(b) believed that another officer might have also been holding him. Detective Zuccaro hit § 87(2)(b) in the face, chest, and leg about five or six times. Detective Cervini was also striking § 87(2)(b) with his fists, five to ten times in total. He hit § 87(2)(b) in the right eye, causing it to swell¹. The officers were crouching in order to strike him, and once he was on the ground, they began to kick him as well. He felt and saw this happen. Detective Cervini and Detective Zuccaro were using their feet to kick § 87(2)(b)'s chest and face at the same time as they hit him. Detective Spagnuolo kicked him in the face and upper body. He was kicked in the face about four or five times in total. An officer who he did not see "stomped" on his right thumb and his left leg. His hand was flat on the ground when it was stepped on. He felt, but did not see this occur, and did not notice that it was injured until afterward in the stationhouse, when he became aware that his right thumb was numb.

Detective Spagnuolo hit § 87(2)(b) on the left shoulder with his police radio two or three times. He was positioned in front of § 87(2)(b) when this occurred. At first, § 87(2)(b) fought back, reaching out with his arms. He stated that he grabbed the radio out of Detective Spagnuolo's hand to prevent Detective Spagnuolo from beating him with it further.² He held the radio for "a nanosecond" before Detective Zuccaro took it away. This was the only time § 87(2)(b) had the radio, and while it was in his possession, all he did was hold it. After Detective Zuccaro took it back, § 87(2)(b) used his arms to cover himself, attempting to protect his face, and moved his legs in an attempt to stand up, but he was unable to do so.

The beating lasted twenty to thirty seconds. The officers were making wisecracks as they struck him. Detective Cervini said, "Don't fuck with the police!" Detective Spagnuolo said, "We've got you on a robbery." § 87(2)(b) believed that the officers stopped striking him because they were ready to arrest him.

At some point during the altercation, § 87(2)(b) saw a man who appeared to be of Middle Eastern descent dressed in motorcycle gear come out of the library and watch for a minute, but because he was being beaten, § 87(2)(b) was not able to observe him closely. He believed that the man went back inside the library. From his position, § 87(2)(b) could not see the gas station.

The officers rolled § 87(2)(b) onto his stomach to place him in handcuffs. He was never struck while he was on his stomach, but it felt as though someone had his foot on his back. After he was handcuffed, he was placed in a seated position, officers called for backup with a radio. Detective Spagnuolo informed § 87(2)(b) that he would be charged with stealing a police radio. Soon afterward, two other unidentified plainclothes officers, arrived with a van. Detective Spagnuolo placed the radio with § 87(2)(b)'s cell phone, headphones and digital camera into a manila envelope. His property was taken from him before the officers arrived with the prisoner van, but they put it in the envelope after the van arrived.

§ 87(2)(b) was placed inside the van, where there were already other detainees. He did not know these people. He was driven around for about an hour while additional prisoners were placed in the van. § 87(2)(b) was brought to the 114th Precinct stationhouse in Astoria. There, he saw Detective Cervini and Detective Zuccaro. § 87(2)(b) asked Detective Zuccaro with what he was being charged, but the detective would not tell him. § 87(2)(b) did not request medical treatment while in the stationhouse. A detainee in the holding cell with § 87(2)(b) who had been placed in the van after him,

¹ At the time of the interview, three days after the incident, § 87(2)(b) was observed to have a bruised and swollen right eye and contusions to the left side of his forehead (Encl. 4E).

² In his statement to IAB on February 25, 2008 and his telephone statement on February 26, 2008, § 87(2)(b) stated that the radio fell to the ground, and he picked it up.

apparently knew Detective Cervini from a previous incident, and engaged him in conversation, calling the officer “Mike.” Indicating § 87(2)(b) Detective Cervini said to the other detainee, “You’ve got to tell these young guys something -- don’t fuck with the police. You will lose.”³ Shortly thereafter, he was taken to Queens Central Booking. The next morning, his mother was informed that he was being charged § 87(2)(b). § 87(2)(b) was not aware that he was charged with anything else. He was released on his own recognizance.

In addition to the contusion to his eye, § 87(2)(b) suffered a contusion to his left leg and loss of sensation in his right thumb from it being stomped on. He went to the § 87(2)(b) for medical treatment on February 22, 2008. His army jacket had been ripped across the back in the fight.

On § 87(2)(b), § 87(2)(b) filed a Notice of Claim with the City of New York stating that at the time and place of the incident, he was “falsely arrested and assaulted without provocation,” causing him to suffer “physical and psychological injuries” (Encl. 7A-B).

Results of Investigation

Canvass of Incident Location

On March 6, 2008, Investigator Brattin and Investigator O’Connor canvassed the intersection of 21st Street and 38th Avenue (Encl. 8A). The entrance to the Long Island City Public Library is located on 21st Street. Exiting the library and turning right, the first cross-street is 38th Avenue. On the other side of 38th Avenue, across from the library, is a Shell gas station. At 38-03 21st Street, directly across the street from the Shell station and diagonal from the library, is a business called U.S. Auto Repair. Next to it, across 21st Street from the library and diagonal to the Shell station, is a Citgo gas station. Employees who had been working at all three businesses on February 19, 2008 stated that they had not seen any police action outside the library on that date. Although the main room of the library had large windows that faced the Shell station across 38th Avenue, § 87(2)(b) stated that no one inside the library on February 19, was aware that anything was going on outside. § 87(2)(b) informed the undersigned that § 87(2)(b)’s criminal defense attorney had visited the library earlier and questioned the employees who had been working at the time of the incident, with no results. § 87(2)(b) stated that there were no security cameras, and that the side of the library sometimes got very dark. She did not recognize the description of the Middle Eastern male wearing motorcycle gear who might have entered the library after watching the incident.

Officer Statements

Detective Edward Spagnuolo

Detective Edward Spagnuolo, a § 87(2)(b)-old white male with brown hair and hazel eyes who was 6’0” tall and weighed 225 pounds, was interviewed at the CCRB on April 11, 2008 (Encl. 11A-B).

On February 19, 2008, Detective Spagnuolo worked from 12:27 PM until 9:00 PM. His partner was Detective Cervini, and they were also working with Detective Zuccaro. He was dressed in casual clothes and was assigned to a black Ford Explorer, #§ 87(2)(b). Detective Spagnuolo’s **memo book** (Encl. 9A-B) noted that an individual was arrested at 3:00 PM at the corner of 21st Street and 38th Avenue. Detective Spagnuolo completed a **Stop Question and Frisk Report** (Encl. 10A) which listed § 87(2)(b)’s address and pedigree information. The report stated that he was stopped at 21st Street and 38th Avenue after being observed for one minute due to furtive movements and a suspicious bulge, made by a phone and a digital camera. Through checked boxes, the report indicated that he was informed of the reason why he was being stopped and that the officers involved identified themselves verbally and by providing their shields, that he was frisked, searched due to a hard object found during the frisk, and ultimately arrested for § 87(2)(b). The report stated that hands were placed on the suspect and he was brought to the ground, but that no other force was used.

Detective Spagnuolo stated that on the date of the incident, he was seated in the front passenger seat of the Ford Explorer, with Detective Zuccaro behind him, and Detective Cervini operating the vehicle. At the corner of 21st Street and 38th Avenue, Detective Spagnuolo observed a black male to his right, at the

³ In the interview, § 87(2)(b) stated that he did not wish to provide any descriptive information about the other detainee out of fear for his own safety. On February 26, 2008, he stated that he would like to withdraw his allegation regarding profanity used at the stationhouse, rather than have it investigated.

northwest corner of the intersection. His jacket was hiked up and Detective Spagnuolo saw a silver object at his waistband, which he believed was possibly a firearm. Detective Spagnuolo told Detective Cervini what he had seen, and Detective Cervini stopped the vehicle in the crosswalk on 38th Avenue. Detective Spagnuolo and his partners got out. § 87(2)(b) was standing on the sidewalk, directly to Detective Spagnuolo's right as he got out of the vehicle. Detective Spagnuolo was wearing his shield around his neck, and verbally identified himself as a police officer. At this time, § 87(2)(b) was fiddling with a pair of headphones on his head, so his hands were not near his waistband. Detective Spagnuolo asked § 87(2)(b) if he had a gun. § 87(2)(b) did not answer. Detective Spagnuolo patted the area where he had seen the silver object earlier, and felt something hard, which he believed could possibly be a firearm. He lifted up § 87(2)(b)'s jacket, and discovered a black digital camera and a silver cellular phone next to each other, tucked into the waistband of his pants. Detective Spagnuolo asked § 87(2)(b) for his identification, intending to complete a UF-250 detailing the stop. The other two detectives were already headed back to the vehicle at this time.

Without verbally responding to the request, § 87(2)(b) reached with one hand toward his back pocket, presumably for his ID, and used his other hand to take the NYPD-issued radio that Detective Spagnuolo was holding. Detective Spagnuolo did not know if his partners saw this happen. This radio, described as being about the size of a sheet of paper folded in half, was used for communication among members of the field team, but Detective Spagnuolo had not been using it during his interaction with § 87(2)(b). § 87(2)(b) held the radio to his chest with both hands, turned his body and took several steps away from Detective Spagnuolo, southbound on 21st Street. Believing that he might be about to run, Detective Spagnuolo grabbed the back of § 87(2)(b)'s jacket from behind. Both he and the civilian fell to the ground.

§ 87(2)(b) fell face-first, with Detective Spagnuolo on his back. § 87(2)(b)'s hands, holding the radio, were underneath him. Detective Spagnuolo explained to his partners that § 87(2)(b) had the radio, concerned that § 87(2)(b) might use it as a weapon against him, although § 87(2)(b) admittedly gave no indication that he was going to do so. Immediately after falling to the ground, Detective Spagnuolo became aware that Detective Cervini and Detective Zuccaro were present. After a brief struggle, Detective Spagnuolo and his partners were able to take the radio back. Detective Spagnuolo took hold of one of § 87(2)(b)'s arms, attempting to pull it from underneath him without turning him over, and Detective Cervini took the other. Detective Cervini was the officer who actually obtained the radio. The struggle did not last long. No officer struck § 87(2)(b) in order to get the radio back. Detective Spagnuolo did not kick him or see other officers do so. Detective Spagnuolo did not see § 87(2)(b) struck with a police radio. One of the officers handcuffed § 87(2)(b) but Detective Spagnuolo could not remember who. § 87(2)(b) was trying to keep his hands under his body and was kicking his feet at this time. After he was handcuffed, he became compliant.

The detectives placed § 87(2)(b) under arrest § 87(2)(b). They called for the prisoner van on point-to-point radio, and it arrived to transport § 87(2)(b) to what Detective Spagnuolo believed to have been the 114th Precinct stationhouse. Detective Spagnuolo was not the arresting officer. The arresting officer of the day would have been assigned the arrest. No officers from his command except for his two partners were present for the arrest. § 87(2)(b)'s property was taken from him and the scene. Some was returned to him at the stationhouse, and some was vouchered. Detective Spagnuolo could not say what happened to any specific property. Detective Spagnuolo did not recall if he assisted in processing § 87(2)(b)'s arrest. He continued to do narcotics enforcement in the area after § 87(2)(b)'s arrest, and did not recall seeing the prisoner at the stationhouse, but admitted that it was possible that he had. Detective Spagnuolo did not use profanity when speaking to § 87(2)(b) or hear any other officer do so.

Detective Spagnuolo stated that § 87(2)(b)'s documented injuries might have occurred when they fell to the ground, or in the struggle to handcuff him. However, he did not recall seeing any injuries on him.

Detective Bryan Zuccaro

Detective Bryan Zuccaro, a § 87(2)(b)-old white male with a bald head and hazel eyes who was 5'8" tall and weighed 195 pounds, was interviewed at the CCRB on April 15, 2008 (Encl. 13A-B).

On February 19, 2008, Detective Zuccaro worked a mid-afternoon tour. He was working with Detective Spagnuolo and Detective Cervini, was dressed in plain clothes, and was assigned to a black unmarked vehicle. They were the chase car for buy and bust. Detective Zuccaro did not bring his memo

book to the CCRB on the date of his interview. His **memo book entry** (Encl. 12A-C), which he later faxed, noted that one individual was arrested at 4:20 PM at 21st Street and 38th Avenue.

Detective Zuccaro remembered hearing Detective Spagnuolo say, "I think this guy has a gun." Detective Zuccaro, who was in the back of the officers' vehicle behind the passenger, did not see the individual his partner had indicated, identified by the investigation as § 87(2)(b) but believed him to be on the sidewalk in the vicinity of 21st Street. Detective Cervini, who was driving, pulled to the side, and Detective Spagnuolo got out first and approached. The passenger side of the vehicle was closer to § 87(2)(b) at this time. Detective Zuccaro could not remember if they were on 21st Street or the cross-street.

Before Detective Zuccaro could get fully out of the car, Detective Spagnuolo waved him back in, saying that it was a false alarm. This took seconds; Detective Cervini had not yet gotten out. Detective Zuccaro did not know if Detective Spagnuolo asked for or obtained § 87(2)(b)'s ID at this time. As Detective Zuccaro was getting back into the car, about to close the door, he heard Detective Spagnuolo yell, "He's got my radio, he's got my radio!" Detective Zuccaro got back out of the car and saw Detective Spagnuolo struggling with § 87(2)(b) who appeared to be about to strike Detective Spagnuolo with his own radio. § 87(2)(b)'s arm was raised to about shoulder-height with the radio in it, but Detective Zuccaro did not think the civilian actually hit Detective Spagnuolo. Detective Zuccaro was not sure what Detective Spagnuolo was doing, but he seemed to be "trying to get his arms on" § 87(2)(b). Detective Zuccaro did not know what part of his body he touched. It seemed like Detective Spagnuolo used one arm to grab for the radio while he took hold of § 87(2)(b)'s shirt with his other hand.

At this point, Detective Zuccaro joined the struggle and used a control takedown to bring § 87(2)(b) to the ground. He executed this move by grabbing § 87(2)(b) by the legs and lifting up, which brought himself and Detective Spagnuolo to the ground as well. Detective Spagnuolo was still trying to get the radio back. Detective Zuccaro assumed that Detective Cervini got out of the officers' vehicle at the same time he did, but did not see what he did. Detective Cervini was not involved in the control takedown. § 87(2)(b) was positioned on his stomach or his side. The radio was recovered by another officer, not by Detective Zuccaro. He was not sure exactly when or how this occurred. An officer handcuffed § 87(2)(b). Detective Zuccaro was not sure who. The civilian struggled a little at this time, trying to tuck one of his arms underneath his body, but once the officers got one arm behind his back, he seemed to give up, and was compliant. Detective Zuccaro did not recall seeing § 87(2)(b) moving his body in any other way. It took about a minute in total to place him in handcuffs.

Detective Zuccaro did not see any officers hit or kick § 87(2)(b) in the course of his arrest, and § 87(2)(b) was not placed in a chokehold. Detective Zuccaro did not strike § 87(2)(b) with a radio, or see any other officer do so. Although he believed that officers looked at § 87(2)(b)'s ID, at some point, he was not sure if this happened before he was placed under arrest. He did not remember § 87(2)(b)'s ID in particular, but stated that it would have been procedure to obtain it for the purposes of completing a UF-250 or arrest paperwork. Detective Zuccaro did not remember if a UF-250 was completed. Detective Zuccaro himself never had the ID in his possession, and did not see any officer throw it on the ground. He did not use profanity or hear other officers do so.

§ 87(2)(b) was transported to the stationhouse by the prisoner van. Detective Zuccaro did not interact with § 87(2)(b) after helping to place him under arrest, and did not see him at the stationhouse.

Detective Michael Cervini

Detective Michael Cervini, a § 87(2)(b)-old white male with blue eyes and blond hair who was 6'2" tall and weighed 205 pounds, was interviewed at the CCRB on April 25, 2008 (Encl. 15A-B).

On February 19, 2008, Detective Cervini worked from 12:27 AM to 9:00 PM. He was working with Detective Spagnuolo and Detective Zuccaro in rental auto #§ 87(2)(b), a black SUV, and was dressed in plain clothes. He and his partners were assigned to the chase car for Team 1 buy and bust operations taking place in the vicinity of the Queensbridge Houses. His **memo book entry** (Encl. 14A-C) notes that one individual was placed under arrest at the corner of 38th Avenue and 21st Street at 4:20 PM.

Detective Cervini remembered that as he was driving on 38th Avenue, Detective Spagnuolo, who was the front passenger, told him to stop at the corner of 21st Street, because he had observed a black male, identified by the investigation as § 87(2)(b) who Detective Spagnuolo believed had a handgun in his waistband. Detective Cervini also saw § 87(2)(b) on the corner, in front of a library and across the street from a Shell gas station, but stopped based on Detective Spagnuolo's observation and instructions. Detective Spagnuolo and Detective Zuccaro, who had been seated behind Detective Spagnuolo, exited the

officers' vehicle as Detective Cervini crossed around the back to where the civilian was standing. The other detectives had already established that § 87(2)(b) did not have a gun, and were talking to him. An officer asked if he had any ID, but Detective Cervini did not notice who that was, and did not believe that § 87(2)(b)'s ID was obtained at that time. The situation appeared to be under control, so Detective Cervini began to get back in the vehicle. He then heard sounds of a "scuffle," possibly the sounds of someone bumping into the car, and turned around to see his partners wrestling with § 87(2)(b). They were yelling at the civilian, but Detective Cervini did not remember them cursing. Detective Cervini saw that § 87(2)(b) had a police department radio in his hand. Detective Cervini did not see him take the radio from Detective Spagnuolo, who he assumed had been holding it when the civilian grabbed it. § 87(2)(b) and the officers were already on the ground⁴, with § 87(2)(b) hunched over, retaining the radio. The officers were both trying to get the radio, and "trying to subdue" § 87(2)(b) by grabbing his upper body. § 87(2)(b) was brought fully to the ground on his back, while he continued to clutch the radio. Detective Cervini did not see him strike any officers with the radio. Detective Cervini joined the struggle seconds after it began and took the radio back from § 87(2)(b). An officer, whose identity Detective Cervini did not remember, placed § 87(2)(b) in handcuffs.

§ 87(2)(b) was searched by Detective Spagnuolo and his property was removed from him. The prisoner van was called to transport him. After the arrest, Detective Cervini saw that items of § 87(2)(b)'s property, including his cell phone, a wallet and an ID, were scattered on the ground. At this time, Detective Cervini picked up the ID. He surmised that the items had fallen off § 87(2)(b)'s person during the struggle. Detective Cervini was unaware of an officer throwing § 87(2)(b)'s ID into the street, and did not do so himself.

Detective Cervini did not ever strike § 87(2)(b) or see his partners do so. § 87(2)(b) was not placed in a choke hold, and no one ever kicked him. Detective Cervini did not speak to § 87(2)(b) using profanity. He did not see anyone strike § 87(2)(b) with a radio, and did not recall if any officers had their radios out before or after Detective Spagnuolo's radio was taken.

Detective Cervini was unaware of § 87(2)(b) being injured or having a black eye, and did not know how the documented black eye might have occurred.

Police Officer Robert Cincotta

PO Robert Cincotta's **memo book entry** for February 19, 2008 (Encl. 16A) shows that he was the assigned arresting officer for his team. PO Cincotta completed § 87(2)(b)'s **arrest report** (Encl. 17A) on February 19, 2008. The narrative of the report stated that § 87(2)(b) "was in possession of a New York City Police Department radio" and that, while being placed under arrest, he "did swing his legs and arms."

On February 20, 2008, PO Cincotta made a **deposition** in Queens County Criminal Court (Encl. 18A-B) stating that he had been informed by Detective Spagnuolo that § 87(2)(b) removed Detective Spagnuolo's department-issued radio, worth over \$1000, from his hand without permission and "fled." PO Cincotta was informed by Detective Spagnuolo that Detective Spagnuolo recovered the radio, and that while attempting to place § 87(2)(b) under arrest, the defendant flailed his arms and legs in an effort to avoid being handcuffed.

§ 87(2)(b), § 87(2)(g)

Medical Records

§ 87(2)(b) was treated in the Emergency Room at § 87(2)(b) on § 87(2)(b). He informed medical personnel that he was assaulted by Narcotics officers on February 19, and was kicked and punched in the face and chest (Encl. 3A). His **medical records** (Encl. 19A-K) show that he was diagnosed with contusions to his chest wall, hand, leg and face. It was noted that he had a bruised right cheek with ecchymosis (skin discoloration caused by the escape of blood into the tissues from ruptured blood vessels.) § 87(2)(b) was prescribed Motrin and released, with instructions to have someone wake him every two hours over the course of the following day.

Police Documents

⁴ At first, Detective Cervini stated that he viewed § 87(2)(b) and the officers falling to the ground.

The **Narcotics Borough Queens Roll Call** (Encl. 20A) indicates that Detective Spagnuolo, Detective Cervini and Detective Zuccaro were assigned a 12:27 PM-11:00 PM tour on February 19, 2008.

The **Narcotics Borough Queens Tactical Plan** (Encl. 21A) prepared for the 114th/108th Precinct Module on February 19, 2008 shows that Detective Spagnuolo, Detective Cervini and Detective Zuccaro were assigned to the chase car, a black Ford. PO Cincotta was assigned to a separate vehicle.

§ 87(2)(b)'s arrest was recorded by PO Cincotta in the **114th Precinct Command Log** (Encl. 22A) at 6:50 PM. His physical condition was listed as normal, and he was transported to Central Booking at 11:20 PM.

A **Property Clerk's Invoice** (Encl. 23A) shows that a black Poloroid camera, a gray cell phone and battery, a pair of headphones and a cable were removed from § 87(2)(b)'s person and vouchered as evidence.

§ 87(2)(b)'s right eye was visibly swollen in his **arrest photograph** (Encl. 24A).

Civilian CCRB and Criminal Conviction History

§ 87(2)(b) was a complainant in CCRB case § 87(2)(b)

§ 87(2)(b) [§ 86(1)(3)&(4)] [§ 87(2)(c)]

Officers' CCRB History

Detective Spagnuolo has a tenure of 14 years with the NYPD, and has not been the subject of any allegation of misconduct substantiated by the CCRB. Detective Cervini has a 16-year tenure. An allegation of physical force was substantiated against him in CCRB case #200006479, but he was found not guilty in the subsequent trial. Detective Zuccaro, who has a 5-year tenure with the NYPD, was the subject of allegations of frisk, search (of person) and vehicle search which were substantiated in CCRB case #200709264. No NYPD disposition was available with regard to the case at the time of this report.

Officer Identification and Pleading of Allegations

Detective Spagnuolo, Detective Cervini and Detective Zuccaro all admitted to some involvement in the stop and subsequent arrest of § 87(2)(b). Detective Spagnuolo stated that it was his decision to stop § 87(2)(b). § 87(2)(g) Detective Spagnuolo was identified as the officer who primarily interacted with § 87(2)(b) and whose radio § 87(2)(b) obtained based on all officer statements. Although Detective Spagnuolo was the front passenger of the car, § 87(2)(b)'s physical description of the officer he said was the driver fit Detective Spagnuolo. § 87(2)(g) § 87(2)(b) stated that he heard a prisoner at the stationhouse refer to an officer, who matched Detective Michael Cervini's physical description, as "Mike." § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Although § 87(2)(b) stated that discourteous language was used at the 114th Precinct stationhouse, he explicitly stated that he did not wish for this allegation to be investigated. § 87(2)(g)

Undisputed and Disputed Facts

It is undisputed that Detective Spagnuolo, Detective Cervini and Detective Zuccaro stopped § 87(2)(b) at the corner of 21st Street and 38th Avenue, and undisputed that at some point, he obtained Detective Spagnuolo's police radio. § 87(2)(b), § 87(2)(g)

Assessment of Evidence

§ 87(2)(b), § 87(2)(g)

By all accounts, § 87(2)(b) was exiting the library located at 21st Street in Long Island City at about 4:30 PM on February 19, 2008 and preparing to cross 38th Avenue when Detective Spagnuolo noticed him. By all accounts, the officers stopped their vehicle, and all three exited and approached § 87(2)(b). Detective Spagnuolo stated that he saw a bulge on § 87(2)(b)'s person which he believed could indicate a weapon, and that through a frisk, he learned that this was caused by a cell phone and a camera in his waistband. Although § 87(2)(b) did not allege that he was frisked, a cell phone and camera were indeed removed from his person and vouchered. The UF-250 completed by Detective Spagnuolo supports his account of the stop; however, by his own account, this documentation was completed when he obtained § 87(2)(b)'s ID after he was placed under arrest.

§ 87(2)(b) alleged that the officers asked for his ID, and that after he gave it to them, a verbal dispute followed, during which officers accused him of having a bad attitude. He alleged that Detective Cervini threw the ID to the ground and ordered him to pick it up. None of the officers confirmed that this argument occurred. Detective Spagnuolo denied that § 87(2)(b) gave the officers his ID. Detective Cervini, too, denied being in possession of the ID until after § 87(2)(b) was already under arrest, and denied throwing it into the street. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) alleged that as he bent to pick up the ID, Detective Spagnuolo placed him in a chokehold and maneuvered him into a sitting position, with his back against the police vehicle. He estimated that he was in the chokehold, which partially restricted his ability to breathe, for five seconds. He specified that Detective Cervini was the first to strike him, and was the officer who hit him in the eye, and claimed that both Detective Cervini and Detective Zuccaro hit him between five and ten times during this period. § 87(2)(b) stated that his face and upper body were struck with a barrage of kicks and punches from all three officers, and alleged that Detective Spagnuolo also hit him two or three times on the left shoulder with his police radio. § 87(2)(b) initially stated that he grabbed the radio from Detective Spagnuolo to prevent the officer from striking him further, but later stated that he simply picked it up after it fell to the ground. § 87(2)(b) maintained that he had the radio in his hand for only a fraction of a second before it was taken from him, and that he made no motion to strike any officer with it.

§ 87(2)(b), § 87(2)(g)

Detective Spagnuolo stated that when he requested § 87(2)(b)'s ID, the civilian grabbed his ID out of his hand. Neither of the other two officers claimed to see § 87(2)(b) take the radio, but were alerted by Detective Spagnuolo that he had it. Only Detective Zuccaro said that § 87(2)(b) threatened to hit any officer with the radio. According to Detective Spagnuolo, he seemed to be about to run southbound on 21st Street. Detective Spagnuolo said that he grabbed § 87(2)(b)'s jacket from behind to prevent him from doing so, causing § 87(2)(b) and himself to fall to the ground. Detective Zuccaro stated that after he saw § 87(2)(b) and Detective Spagnuolo scuffling for the radio in an upright position, he grabbed § 87(2)(b)'s legs and brought him to the ground. Detective Cervini stated that he did not see his partners and § 87(2)(b) fall to the ground, and said that once they were lying down, he took the radio back from § 87(2)(b). All three officers cast the ensuing fight as a struggle to recover the radio. They stated that § 87(2)(b) held the radio, and later his hands, under his body, and moved his legs. However, they denied seeing § 87(2)(b) hit or kicked, and denied taking part in these actions.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) stated that as the detectives hit and kicked him, they made “wisecracks,” and Detective Cervini said, “Don’t fuck with the police!” Detective Cervini denied making this remark, and no other officer admitted to hearing him use profanity.

Allegation A: Abuse of Authority: Detective Edward Spagnuolo stopped § 87(2)(b)

Detective Spagnuolo stated that he stopped § 87(2)(b) after seeing a suspicious bulge on his person, and asked for his ID after determining through the frisk that the bulge was caused by an innocuous object. He completed a UF-250 to this effect after arresting § 87(2)(b). Neither of his partners admitted to participating in the frisk, and did not claim to have witnessed it occur, but confirmed that Detective Spagnuolo said that he suspected § 87(2)(b) of having a gun. § 87(2)(b) denied that he was ever frisked, stating that he was only asked for his ID. § 87(2)(b), § 87(2)(g)

Allegation B: Discourtesy: Detective Michael Cervini acted rudely toward § 87(2)(b)

§ 87(2)(b) alleged that after he gave Detective Cervini his ID, the detective threw it into the street for him to pick up. All officers denied that they obtained § 87(2)(b)'s ID before he was in handcuffs, and Detective Cervini specifically denied the alleged rude action. § 87(2)(g)

Allegation C: Force: Detective Edward Spagnuolo used a chokehold against § 87(2)(b)

Allegation D: Force: Detective Michael Cervini used physical force against § 87(2)(b)

Allegation E: Force: Detective Bryan Zuccaro used physical force against § 87(2)(b)

Allegation F: Force: Detective Edward Spagnuolo used physical force against § 87(2)(b)

Allegation G: Force: Detective Edward Spagnuolo struck § 87(2)(b) with a radio.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) stated that Detective Spagnuolo brought him to sitting position using a chokehold, and that all three officers hit and kicked him. He specified that Detective Cervini, the first officer to strike him, punched him in the right eye, causing swelling, but claimed to have been hit in the face by Detective Zuccaro as well, and stated that he was kicked in the face five or six times in total by the three officers. § 87(2)(g)

§ 87(2)(b) also claimed to have been struck in the left shoulder with Detective Spagnuolo’s radio. § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

Allegation H: Discourtesy: Detective Michael Cervini spoke obscenely and/or rudely to § 87(2)(b)

§ 87(2)(b).

§ 87(2)(b) alleged that Detective Cervini told him, “Don’t fuck with the police!” Detective Cervini denied using profanity. § 87(2)(g)

Investigator:

Kate Brattin

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: